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20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 SAN FRANCISCO DIVISION

23 UNITED STATES OF AMERICA,) CASE NO. 3:20-cr-00249-RS
24 Plaintiff,)
25 v.) JOINT FILING REGARDING PROPOSED
26 ROWLAND MARCUS ANDRADE,) JURY INSTRUCTION 3.9 (TESTIMONY OF
27 Defendant.) WITNESSES INVOLVING SPECIAL
28) CIRCUMSTANCES)
)
) Jury Trial: 8:30 a.m. thru ~Mar. 10, 2025
) Court: Courtroom 3 | 17th Floor
) Judge: Hon. Richard Seeborg
)

29 At the charge conference today, the parties disagreed as to the proper formulation of Model
30 Ninth Circuit Jury Instruction 3.9 (Testimony of Witnesses Involving Special Circumstances –
31 Immunity, Benefits, Accomplice, Plea) as it relates to witnesses Jack Abramoff and Brian Darrow. The
32 Court asked the parties to file jointly with their proposed response, and the parties do so here.

33 For context here, the entirety of Ninth Circuit Model Instruction No. 3.9 is:

34 **3.8 Testimony of Witnesses Involving Special Circumstances—**
35 **Immunity, Benefits, Accomplice, Plea**

1 You have heard testimony from [*name of witness*], a witness who
2 [received [benefits] [compensation] [favored treatment] from the government in
connection with this case];

3 [admitted being] [was alleged to be] an accomplice to the crime charged. An
4 accomplice is one who voluntarily and intentionally joins with another person in
committing a crime];

5 [pledaded guilty to a crime arising out of the same events for which the defendant
6 is on trial. This guilty plea is not evidence against the defendant, and you may consider it
only in determining this witness's believability].

7 For [this] [these] reason[s], in evaluating the testimony of [*name of witness*], you
8 should consider the extent to which or whether his testimony may have been influenced
9 by [this] [any of these] factor[s]. In addition, you should examine the testimony of [*name of witness*] with greater caution than that of other witnesses.

10 **Comment**

11 The instruction to consider accomplice testimony with "greater caution" is
12 appropriate regardless of whether the accomplice's testimony favors the defense or
prosecution. *United States v. Tirouda*, 394 F.3d 683, 687-88 (9th Cir. 2005). The
Committee recommends giving this instruction whenever it is requested.

13 I. Government's Proposed Instruction

14 The government proposes that the Court instruct the jury using the proposed formulation below,
15 which tracks the Ninth Circuit Model Instruction. As the Ninth Circuit and other circuits have held, jury
16 instructions related to witnesses involving special circumstances, such as benefits or pleas, should
17 generally be modeled along the lines of the circuit's pattern instructions. *See United States v. Tirouda*,
18 394 F.3d 683, 687-88 (9th Cir. 2005) (holding that an accomplice witness instruction should be properly
19 formulated along the lines of the Ninth Circuit pattern instruction); *see also United States v. Mason*, 126
20 F. App'x 702, 706 (6th Cir. 2005) (quoting *United States v. Carr*, 5 F.3d 986, 992 (6th Cir. 1993))).
21 ("[I]n this circuit, specific instructions explicitly highlighting problems with accomplice testimony are
22 not required as long as the instruction "substantially covers" the substance of the pattern jury
23 instruction."). Based on this model language, the government proposes that the Court give the following
24 instruction as to Jack Abramoff and Brian Darrow:

25 You have heard testimony from Jack Abramoff, a witness who received benefits
26 from the government in connection with this case, and admitted being an accomplice to
the crime charged. An accomplice is one who voluntarily and intentionally joins with
27 another person in committing a crime.

1 Mr. Abramoff pleaded guilty to a crime arising out of the same events for which
2 the defendant is on trial. This guilty plea is not evidence against the defendant, and you
3 may consider it only in determining this witness's believability.

4 For these reasons, in evaluating the testimony of Jack Abramoff, you should
5 consider the extent to which or whether his testimony may have been influenced by any
6 of these factors. In addition, you should examine the testimony of Jack Abramoff with
7 greater caution than that of other witnesses.

8 You have heard testimony from Brian Darrow, a witness who received benefits
9 from the government in connection with this case, and pleaded guilty to a crime arising
10 out of the same investigation for which the defendant is on trial. This guilty plea is not
11 evidence against the defendant, and you may consider it only in determining this
12 witness's believability.

13 For these reasons, in evaluating the testimony of Brian Darrow, you should
14 consider the extent to which or whether his testimony may have been influenced by any
15 of these factors. In addition, you should examine the testimony of Brian Darrow with
16 greater caution than that of other witnesses.

17 II. Defendant's Proposed Instruction

18 Mr. Andrade's language, which is generally modeled along the lines of the pattern instruction, better
19 focuses the jury's attention to the purpose of the instruction that is cautioning the jurors regarding these
20 witnesses' believability. Mr. Andrade proposes and requests the following language:

21 You have heard testimony from Jack Abramoff and Brian Darrow, who pled
22 guilty to crimes arising out of the same events or investigation for which the
23 defendant is on trial, and received favorable plea deals from the government to
24 testify.

25 The guilty pleas of Jack Abramoff and Brian Darrow are not evidence against
26 the defendant, and you may consider them only in determining the believability of
27 these witnesses.

28 For these reasons, in evaluating the testimony of Jack Abramoff and Brian
29 Darrow, you should consider, for each of them, the extent to which or whether their
30 testimony may have been influenced by either of these factors.

31 In addition, you should examine the testimony of Jack Abramoff and Brian
32 Darrow with greater caution than that of other witnesses.

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1 DATED: March 4, 2025

Respectfully submitted,

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